


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 6, 2014

TO: Honorable Members of the Rules, Elections and
Intergovernmental Relations Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No.: 14-0002-S57
Assignment No.: 14-05-0339

SUBJECT: Resolution (Huizar-Martinez) to Support Assembly Bill (AB) 2618 relative to Business Improvement Districts.

CLA RECOMMENDATION: Adopt the attached revised Resolution to include in the City's 2013-2014 State Legislative Program SUPPORT of AB 2618 (Perez) which amends the California Property and Business Improvement District Law of 1994 to provide business improvement districts and the courts with clarity regarding property-based assessments and the manner in which special benefits should be determined, IF AMENDED, to continue to exclude properties zoned solely residential in a property-based business improvement district from the assessment; define properties zoned solely residential as those parcels which have a building that is a single-family stand-alone dwelling or a building with two to four units; and define how General Benefits should be separated and quantified.

SUMMARY

Resolution (Huizar-Martinez) states that the California Property and Business Improvement District Law of 1994 (PBID) authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose making improvements and promoting activities of benefit to the properties and businesses within the district. The Resolution further states that California law requires management district plans to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district. According to the Resolution, on February 21, 2014, Assemblyman John Perez introduced Assembly Bill (AB) 2618 to clarify requirements in forming property and business improvement districts in California. According to the Resolution, the author of the bill states that the lack of legislative guidance has resulted in inconsistent application of the law which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts. According to the Resolution, AB 2618 includes provisions that seek to clarify the terms General and Special Benefits with respect to property-based business improvement districts.

The Resolution notes that the City has established nearly 40 business improvement districts, legislative guidance and clarity could assist with the implementation of the City's Business Improvement District Program which helps eliminate blight and enhance business promotion and public safety. The Resolution, therefore, recommends support of AB 2618.

BACKGROUND

On April 29, 2014, Resolution (Huizar-Martinez) was introduced to support AB 2618 to clarify requirements for the formation of property and business improvement districts in California.

Pomona Business Improvement District

In 2004, business owners of the Pomona Downtown Business Improvement District (PBD) voted 126 to 66 to establish the district for the provision of security, streetscape maintenance, marketing and special events. In 2006, property owner Robert Dahms sued the City of Pomona to block the assessments arguing that the City of Pomona, in forming the district, had violated a number of provisions under Proposition 218.

Namely, Dahms argued that the City of Pomona had violated the provision that states that the assessment on each parcel in the district shall not exceed the reasonable cost of the proportional Special Benefit. Dahms also argued that the City of Pomona's discounted assessment for nonprofit entities, such as fraternal organizations and churches, was unjustified; that some commercial properties were improperly assessed and that the Pomona's method of determining assessments was illegal. The Second District Court of Appeal Ruled twice that the assessments did not violate Proposition 218.

Second District Court of Appeals Ruling

On May 12, 2009, the Second District Court of Appeal ruled that parcels can receive a Special Benefit from improvements funded by assessments if the services funded by the assessment are over and above those already provided by the city as long as the assessment does not exceed the reasonable cost of the proportional Special Benefit conferred. Additionally, the court ruled that parcels can receive reduced assessments as long as the reduction is not financed by the assessments. The court also ruled that the use of multiple property characteristics to determine the proportional Special Benefit is appropriate. Because not all parcels in the district are identical in shape and other characteristics, some will receive more Special Benefit than others. The district used a combination front footage, building size, and lot area to determine the proportional Special Benefit. The property assessment formula in that case is as follows:

- 40 % of the assessment is based on street frontage.
- 40 % of the assessment is based on building size.
- 20 % of the assessment is based on lot size.

The Court of Appeals stated that the inclusion of building and lot size as criteria should compensate for any disproportionality that might have resulted from exclusive reliance on front footage. Lastly, the court ruled that the 45-day period between the mailing of the notice of public hearing and the public hearing is calculated by excluding the day of the mailing and including the day of the hearing.

AB 2618

On February 21, 2014, Speaker John Perez introduced AB 2618 which adopts the ruling of the Second District Court of Appeals and seeks to clarify restrictions on property-based assessments and the manner in which Special Benefits should be determined. Specifically, the bill seeks to clarify the term General Benefit and require any property-based assessment to be proportional to the Special Benefit conferred on the assessed property and would prohibit the assessment from exceeding the reasonable cost of the proportional Special Benefit conferred. The term General Benefit is defined as any benefit provided to the public at large or any person or property other than the properties located within the property-based district. General benefit excludes all types and components of a "Special Benefit." The bill amends the California Streets and Highways Code to clarify that services and activities provided for properties in an improvement district are all Special Benefits and no portion is General Benefit. However, the bill does not include the other components of General Benefits as established by the Supreme Court of California in the case Silicon Valley Taxpayers Assn. v. Santa Clara County wherein the Court ruled that "General Benefits are not restricted to benefits conferred only on persons and property outside the assessment district, but can include benefits both conferred on real property located in the district and the public at large."

Current law excludes properties zoned solely residential from the assessments inasmuch as these properties are presumed not to receive Special Benefits from the improvements, maintenance and activities funded through the assessments. The bill removes properties zoned solely residential from the exclusion and if enacted, properties zoned solely residential, would be subject to assessment.

The author of the bill indicates that because California law does not specifically address the distinction between Special and General Benefits there is confusion around the issues of district formation, the levying of assessments and the functions of business improvement districts. Therefore, cities throughout the state are using different methodologies to form and assess business improvement districts. Additionally, lawsuits have been filed challenging the formation of business improvement districts and the courts have often reached inconsistent decisions. The author believes that ongoing litigation threatens the viability of all business improvement districts and the employment, public health and safety as well as economic benefits they create.

Office of the City Clerk

The Office of the City Clerk notes that AB 2618 would require that all properties zoned solely residential, including single-family residences, be assessed in a property-based business improvement district. The City Clerk, therefore, recommends that bill be amended to exclude properties zoned solely residential from the assessment and define residential properties as single-family dwelling or a building with two to four units. The City Clerk further notes that the bill should further distinguish between General and Special Benefits by defining how General Benefits should be separated and quantified.

Conclusion

Business improvement districts provide employment opportunities, improve economic vitality, enhance public health and promote public safety in many areas throughout the City. Supporters of the AB 2618 believe that in light of the loss of community redevelopment areas, business improvement districts provide a structure for the continued promotion of economic activity. Our Office concurs with the recommendations of the City Clerk to support AB 2618 if amended to continue to exclude properties zoned solely residential in a property-based business improvement district from the assessment; define properties zoned solely residential as those parcels which have a building that is a single-family stand-alone dwelling or a building with two to four units; and define how General Benefits should be separated and quantified.

DEPARTMENTS NOTIFIED

Office of the City Clerk

BILL STATUS

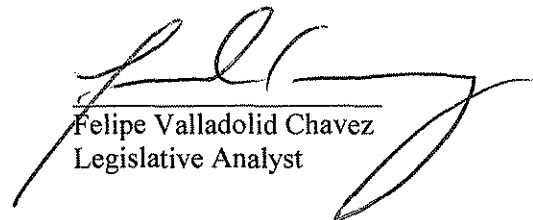
AB 2618

Introduced and referred to the Assembly Committee
on Local Government

Passed the Assembly Committee on Local Government

February 21, 2014

May 1, 2014



Felipe Valladolid Chavez
Legislative Analyst

Attachments: 1) Resolution
2) City Clerk Memorandum

GFM:fvc

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies, proposed to or pending before a local, state or federal government body or agency, must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the California Property and Business Improvement District Law of 1994 (PBID) authorizes cities to form property and business improvement districts that may levy assessments within a district for the purpose making improvements and promoting activities of benefit to the properties and businesses within the district; and requires management district plans to include, among other things, the name of the proposed district, a description of the boundaries of the district, and the total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district; and

WHEREAS, on February 21, 2014, Assemblyman John Perez introduced Assembly Bill (AB) 2618 to clarify requirements in forming property and business improvement districts in California; and

WHEREAS, the author of the bill states that the lack of legislative guidance has resulted in inconsistent application of the PBID law, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts; and

WHEREAS, AB 2618 includes the following provisions with respect to property-based business improvement districts:

- That the management district plan also include the proportionate special benefit derived by each identified parcel, the total amount of all special benefits conferred on the properties located within the district, the total amount of any general benefit, and an engineer's report;
- The phrase "Special Benefit" be defined as a distinct benefit over and above a general benefit;
- That any property-based assessment be proportional to the special benefit conferred on the assessed property, and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred;

WHEREAS, inasmuch as the City has established nearly 40 business improvement districts, legislative guidance and clarity could assist with the implementation of the City's Business Improvement District Program which helps eliminate blight, enhance business promotion, and enhances public safety.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles, hereby includes in its 2013-2014 State Legislative Program, SUPPORT of Assembly Bill 2618 (Perez) to provide business improvement districts and the courts with clarity regarding property-based assessments and the manner in which special benefits should be determined, IF AMENDED, to continue to exclude properties zoned solely residential in a property-based business improvement district from the assessment; define properties zoned solely residential as those parcels which have a building that is a single-family stand-alone dwelling or a building with two to four units; and define how General Benefits should be separated and quantified.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: April 30, 2014

TO: Office of the Chief Legislative Analyst
Attn: John Wickham


FROM: Holly L. Wolcott, Interim City Clerk

SUBJECT: **CALIFORNIA ASSEMBLY BILL 2618 AS AMENDED
(GENERAL BENEFIT ASSESMENTS)**

Attached is the completed Bill Response Report for California Assembly Bill 2618 as amended. If further information is needed or have any questions, please contact me at (213) 978-1023.

HLW:amm

Attachment

N:\Exec\Bills\Memo for AB 2618

CITY OF LOS ANGELES
BILL RESPONSE REPORT

DEPARTMENT/BUREAU/OFFICE City Clerk/N&BID		BILL NO. AB 2618 as amended	AUTHOR John A. Pérez
PREPARED BY Miranda Paster	EXT. 978-1111	DATE April 29, 2014	AMENDED DATE April 21, 2014

BILL SUBJECT TITLE :	An act to amend Sections 36601, 36602, 36603.5, 36622, 36625, 36628.5 and 36632 of, to amend and renumber Sections 36606, 36611, 366612, 36613, 36614, and 36614.5 of, and to add Sections 36609.5, 36614.6, 36614.7 and 36615.5 to, the Streets and Highways Code relating to benefit assessments.
<p>I. Describe the impact this bill will have on your department or the City, its program(s), and/or its constituency (state existing law or practice, a summary of the effect the bill will have on existing department operations, etc.).</p> <p>This Bill seeks to clarify the General Benefit and require any property-based assessment to be proportional to the special benefit conferred on the assessed property, and would prohibit the assessment from exceeding the reasonable cost of the proportional special benefit conferred. It seeks to clarify the General Benefits as the view decided in the Dahms v. City of Pomona case. It redefines General benefit as “any benefit provided to the public at large or any person or property other than the properties located within the property-based district. General benefit excludes all types and components of a “special benefit as defined in Section 36615.5”</p> <p>The bill changes Section 36632 to remove the exclusion of properties zoned solely residential are presumed not to receive special benefits from the improvements, maintenance, and activities funded through these assessments.</p>	
<p>II. Give estimate of cost or savings to your department (include SB 90 reimbursements, if applicable).</p> <p>N/A</p>	
<p>III. Arguments both “For” and “Against” this bill.</p> <p>For: This bill amends the Streets and Highways Code to clarify general benefits by indicating that the services and activities provided for properties are all special benefits and no portion is general.</p> <p>Against: The bill would allow properties zoned solely residential, which includes single family residences, to be assessed in a property-based business improvement district which is designed to improve economic development.</p>	

FOR CLA USE ONLY	
Position Noted _____	Committee _____
Analyst _____	Council _____

IV. Recommended position and justification:

No Position Support Oppose Amend

Describe reasons for recommended position (include relevant existing City legislative policy, and any proposed amendments in underline and ~~strike-out~~ format).

AMEND: This bill would all properties zoned solely residential, which includes single family residences, to be assessed in a property-based business improvement district which is designed to improve economic development. The bill should be amended to exclude and define properties zoned solely residential as a parcel with a single-family dwelling or a building with two to four units. Currently, there are boundary concerns that would be corrected and/or eliminated by determining and defining residential use rather than allowing all residential use parcels to be assessed.

The Bill should clarify how to separate and quantify general benefits (e.g., inasmuch as the cost of an improvement/activity is defined as special benefits and Engineers have reported that General benefits are de minimus and unquantifiable, there is finding of a minimal general benefit to surrounding parcels and the General benefits will be calculated as 1% of the total assessments. The amount of the General benefit will not be deducted from the special assessment revenue total, but shall be funded from another source other than assessments.

V. Interested Parties:

Indicate any interest other departments or organizations may have on the bill. Also, list any contacts you made in preparing this information.

The City Attorney, Council Offices and Business Improvement District.